

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

UNITED STATES OF AMERICA,

Plaintiff,

v.

ED RIVERA,

Defendant.

Case No. [00-cr-00477-SI-1](#)

**ORDER DENYING GOVERNMENT'S
MOTION TO STAY AND FOR LEAVE
TO FILE A MOTION FOR
RECONSIDERATION**

Re: Dkt. No. 51

On July 31, 2020, the government filed a motion to stay this Court's July 30 Order Granting Compassionate Release and requesting leave to file a motion for reconsideration. The government seeks to assert a new contention that defendant was not permitted to file a motion for compassionate release under 18 U.S.C. § 3582(c) because his offense occurred prior to November 1, 1987. The basis for the government's requests for reconsideration is a July 23, 2020 decision in *United States v. Whitmore*, Case 3:00-cr-00194 EMC, Dkt. No. 91 (N.D. Cal. July 23, 2020).

The Court DENIES the government's motion. The government failed to raise this argument in its opposition brief (despite the fact that defendant mentioned this issue in his motion), and the government did not raise the matter at either the July 16 or July 30 hearings.¹ The government has not satisfied the requirement for granting leave to file a motion for reconsideration because the government has not shown that in the exercise of reasonable diligence that it could not have presented this argument earlier.

¹ Indeed, at the July 30 hearing, the government stated that it no longer had concerns about Mr. Rivera's release in light of the conditions of supervised release and the Probation Officer's discretion to place him in a halfway house.

1 However, if the Bureau of Prisons grants Mr. Rivera compassionate release on its own
2 accord, the Court will vacate the July 30, 2020 order as moot. Accordingly, the Court directs the
3 government to contact the BOP to inquire whether the BOP will grant Mr. Rivera compassionate
4 release, and to inform the Court of the BOP's response no later than **August 10, 2020**.

5
6 **IT IS SO ORDERED.**

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8 Dated: July 31, 2020



SUSAN ILLSTON
United States District Judge